

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	
)	
CHRISTOPHER F. ALLEN)	Adversary Proceeding
(Chapter 7 Case <u>98-40711</u>))	Number <u>98-4085</u>
)	
<i>Debtor</i>)	
)	
)	
CHRISTOPHER F. ALLEN)	
)	
<i>Plaintiff</i>)	
)	
v.)	
)	
GEORGIA DEPARTMENT OF)	
HUMAN RESOURCES,)	
)	
<i>Defendant</i>)	

MEMORANDUM AND ORDER

Debtor filed this adversary proceeding on April 29, 1998, seeking declaratory judgment that his debt to the defendant, Georgia Department of Human Resources, is dischargeable pursuant to Section 523(a)(5) of Title 11 of the United States Code. Defendant Georgia Department of Human Resources (“DHR”) filed a Motion for Summary Judgment on September 15, 1998. Debtor responded on October 5, 1998, and DHR replied by brief dated October 15, 1998. This Court has jurisdiction in this adversary

proceeding by virtue of 28 U.S.C. § 1334 and 28 U.S.C. § 157(b)(2)(I). This memorandum opinion constitutes my Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

FINDINGS OF FACT

DHR attached the affidavit of Ms. Martha Van Vleck in support of its motion. This affidavit has been uncontested, other than by conclusory statements of little value to this Court.¹ The affidavit established that by Administrative Consent Order dated October 11, 1994, Debtor was ordered to pay current child support in the amount of \$40.00 per week and an additional \$13.00 per week as reimbursement of prior public assistance. By Order of the Superior Court of Chatham County on October 18, 1994, Debtor was ordered to pay \$73.60 per week in child support.

Since the entry of these Orders, Debtor has paid a total of \$192.00 toward his child support obligations. The total obligation owing to the DHR as of December 29,

¹ Debtor alleges in his brief in opposition to the Motion for Summary Judgment that he “will present” evidence establishing an issue of material fact, but attaches no evidence to refute the statement of Ms. Van Vleck. Rule 7056(e) of the Federal Rules of Bankruptcy Procedure provides:

When a motion for summary judgment is made and supported . . . , an adverse party may not rest upon the mere allegations or denials of the adverse party’s pleading, but the adverse party’s response, *by affidavits or as otherwise provided in this rule*, must set forth specific facts showing that there is a genuine issue for trial. *If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.*

Fed. R. Bankr. P. 7056(e) (emphasis supplied).

1997, was \$14,759.20, of which \$2,480.00 comprised the unreimbursed public assistance debt.²

CONCLUSIONS OF LAW

11 U.S.C. § 523(a)(5) provides, in pertinent part:

A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child . . . but not to the extent that such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (*other than* debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government *or to a State or any political subdivision of such State.*). (emphasis provided).

This Court has previously held that child support debts assigned to a State by virtue of the Social Security laws are nondischargeable. *See In re Burrows*, Ch. 7 Case 97-20703, Adv. Pro. 97-02065 (Bankr. S.D.Ga. February 4, 1998) (Davis, J.). Indeed, Debtor “concedes that past due child support is nondischargeable, regardless of whether the support is owed to an individual or to the State as assignee of that individual’s rights.” (Brief of Plaintiff, p.1). Debtor also concedes that the debt was assigned to DHR pursuant to the Social Security Act. (Debtor’s Complaint, ¶ 6). No other issue remains to be tried, in light of

² DHR concedes that unreimbursed public assistance is not excepted from discharge but contends that the debt owing to it for back child support is nondischargeable.

Debtor's failure to submit evidence as required by the Bankruptcy Rules.

O R D E R

In consideration of the foregoing, it is therefore the Order of this Court that the debt for child support owed by the Debtor to the Defendant is excepted from discharge pursuant to Section 523(a)(5) of Title 11. The Defendant Georgia Department of Human Resources's Motion for Summary Judgment is hereby granted.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of November, 1998.